

**IN THE COURT OF APPEALS OF OHIO
SECOND APPELLATE DISTRICT
CLARK COUNTY**

STATE OF OHIO	:	
	:	Appellate Case No. 08-CA-34
Plaintiff-Appellee	:	
	:	Trial Court Case No. 08-CR-194
v.	:	
	:	(Criminal Appeal from
EVERETT JOHNSON	:	Common Pleas Court)
	:	
Defendant-Appellant	:	
	:	

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OPINION

Rendered on the 14th day of August, 2009.

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FAIN, J.

{¶ 1} Defendant-appellant Everett Johnson appeals from his conviction and sentence on four counts of Rape of a child under the age of thirteen. Johnson argues that his convictions are against the manifest weight of the evidence and that

they are not supported by sufficient evidence. We conclude that Johnson's convictions are supported by sufficient evidence and are not against the manifest weight of the evidence. Accordingly, the judgment of the trial court is Affirmed.

I

{¶ 2} B.F. was born to K.F. on May 3, 1994. K.F. met Johnson in mid-2000, and she moved with B.F. into his home later that year. B.F. lived with her mother and Johnson until she was removed from the home in 2001, following allegations of domestic violence. B.F. then lived with her maternal grandparents for a few months before returning briefly to her mother's custody. B.F. was again removed and placed with her grandparents for a while before her father, R.C., obtained custody the following year. During this time, B.F. visited with her mother on weekends and during the summer.

{¶ 3} B.F. testified that Johnson raped her for the first time when she was only six years old. She awoke to find Johnson on top of her "stabbing me on my stuff," which she explained meant her "private part." B.F. noticed that her panties had been removed, and that Johnson's underwear was down around his knees. Johnson was moving up and down and breathing hard. Although B.F. told Johnson to stop, he did not. B.F. covered her face with a pillow until Johnson was through. He told the child not to tell her mom what had happened. Because she was afraid that Johnson might hurt her and that her mom might not believe her, B.F. did not tell anyone about the incident at that time.

{¶ 4} B.F. described the ongoing sexual abuse, including the various

addresses at which her mother was living when the abuse occurred. The sexual abuse occurred frequently when she visited her mother's home, usually when her mother was gone, but sometimes when her mother was asleep. B.F. explained that as she got older, Johnson "started putting his mouth on my stuff." A couple of times Johnson forced her to put her mouth "on his stuff," which is what she calls a male's "private area." She also testified that Johnson would "stick his stuff up my butt." B.F. described a specific incident where she and Johnson watched a pornographic movie, and he removed her clothes and proceeded to perform the same acts on B.F. that they had seen in the movie.

{¶ 5} B.F. recalled the last time that Johnson raped her, which occurred in February, 2007, the weekend before her mother's birthday. B.F. stated that her mother had left the house and that she was on the phone with a friend, when Johnson came into her bedroom and removed her clothes, causing her to end the call. Johnson vaginally raped B.F.

{¶ 6} When B.F. was in third grade, she told her younger half-sister about the abuse. B.F.'s dad and her stepmother, S.H., increasingly questioned her about the numerous gifts that she received from Johnson. (B.F. explained that other than the sexual abuse Johnson was nice to her, giving her money and buying her gifts. B.F. felt that Johnson would give her whatever she asked for.) B.F. did not disclose the abuse at this time. B.F. was afraid that if she told adults what was happening, she would not be able to see her mom any more, and she feared that her mother would not believe her.

{¶ 7} Nevertheless, the day after her mother's birthday in February, 2007,

B.F. finally told her stepmother of the years of sexual abuse by Johnson. S.H. took B.F. to talk to her grandfather, but B.F. was crying so hard that S.H. had to tell him what had happened. K.F. was asked to come over. When she was told of Johnson's sexual abuse of B.F., she became very angry with her daughter.

{¶ 8} K.F. took B.F. to the hospital, and the police were called. K.F. told police that she did not believe B.F., and that she no longer wanted anything to do with her daughter. A complete physical examination could not be completed because B.F. was in great discomfort due to a severe vaginal infection and resultant inflammation. When B.F. was tested for sexually transmitted diseases, she tested positive for Chlamydia and Trichomonas.

{¶ 9} After B.F. told the police about the "white stuff" that Johnson would leave on her and her sheets, police collected all of the bedding from B.F.'s bed at her mother's residence. Johnson's sperm was found on the sheets from B.F.'s bed.

{¶ 10} Initially Johnson was indicted on eight counts of Rape. Before trial, the State obtained a new indictment, charging four counts of Rape – one count for each different type of Rape, i.e., vaginal and anal intercourse, fellatio, and cunnilingus, each of which had occurred numerous times over a span of six years. The original indictment was dismissed.

{¶ 11} Dr. Duffee testified at trial as an expert in the areas of pediatrics and child psychology. He explained the grooming process whereby the perpetrator of sexual abuse seeks to establish an exceptionally close relationship with a child, which generally includes an air of secrecy and the giving of gifts and extra attention. Children who are the victims of sexual abuse often have self-esteem problems, which

frequently manifests in “acting out” behavior. Furthermore, when female victims reach puberty, they often become promiscuous. They may also try to make themselves unattractive to the perpetrator by overeating, dressing like a boy, and poor hygiene. Dr. Duffee explained that sexually abused children often delay in reporting the abuse, particularly when the abuse starts at such an early age that the child does not understand the wrongful nature of the abuser’s acts.

{¶ 12} In Johnson’s defense, he and his wife, B.F.’s mother, (K.F. and Johnson married in July, 2007) portrayed B.F. as a very troubled child who was often in trouble both at home and at school and who frequently lied in order to get her own way. Johnson pointed to evidence of B.F.’s sexual promiscuity with three boys her own age.

{¶ 13} Johnson denied any sexual abuse of B.F., and the couple insisted that Johnson’s health problems permit him to have intercourse only on his side. Johnson insisted that B.F. made up the story of abuse because she did not want her mother and Johnson to marry and move out of the state without her.

{¶ 14} K.F. testified that Johnson’s sperm was on her daughter’s sheets because while their bedding was in the laundry, she put B.F.’s sheet on their bed, where she and Johnson then had intercourse. She claimed that several days later, she allowed B.F. to remove the soiled sheet and put it back on her own bed. Although K.F. was home when the bedding was collected, she never told officers that B.F.’s sheet had been on her bed. Nor did she tell the detective two weeks later, when he came for a DNA comparison swab from Johnson, or in any of her subsequent interviews with the detective.

{¶ 15} A jury found Johnson guilty as charged, and the trial court ordered an aggregate sentence of forty years. Johnson appeals.

II

{¶ 16} Johnson's sole assignment of error is as follows:

{¶ 17} "THE COURT ERRED IN CONVICTING APPELLANT OF FOUR COUNTS OF RAPE."

{¶ 18} In his sole assignment of error, Johnson maintains that his convictions are not supported by sufficient evidence and that they are against the manifest weight of the evidence. In support, Johnson challenges the credibility of B.F. The credibility of witnesses and the weight to be given to their testimony are primarily matters for the trier of fact to resolve. *State v. Bach*, Montgomery App. No. 21582, 2007-Ohio-2130.

{¶ 19} A sufficiency of the evidence argument challenges whether the State has presented adequate evidence on each element of the offense to allow the case to go to the jury or to sustain the verdict as a matter of law. *State v. Thompkins*, 78 Ohio St.3d 380, 386, 1997-Ohio-52. The proper test to apply to such an inquiry is the one set forth in paragraph two of the syllabus of *State v. Jenks* (1991), 61 Ohio St.3d 259, 574 N.E.2d 492: "An appellate court's function when reviewing the sufficiency of the evidence to support a criminal conviction is to examine the evidence admitted at trial to determine whether such evidence, if believed, would convince the average mind of the defendant's guilt beyond a reasonable doubt. The relevant inquiry is whether, after viewing the evidence in a light most favorable to the

prosecution, any rational trier of fact could have found the essential elements of the crime proven beyond a reasonable doubt." In contrast, when reviewing a judgment under a manifest weight standard of review "[t]he court reviewing the entire record, weighs the evidence and all reasonable inferences, considers the credibility of witnesses and determines whether in resolving conflicts in the evidence, the [factfinder] clearly lost its way and created such a manifest miscarriage of justice that the conviction must be reversed and a new trial ordered. The discretionary power to grant a new trial should be exercised only in the exceptional case in which evidence weighs heavily against the conviction." *Thompkins*, supra, quoting *State v. Martin* (1983), 20 Ohio App.3d 172, 175, 485 N.E.2d 717.

{¶ 20} Johnson argues that B.F. lied throughout the investigation and at trial. In support, he focuses on the fact that the child exhibits many behavioral problems both at home and at school, including lying and sexual promiscuity.

{¶ 21} The State's expert witness, Dr. Duffee, gave a description of the common grooming process of pedophiles – the giving of gifts and extra attention, and the air of secrecy about the relationship – that is consistent with B.F.'s testimony. She said that other than the sexual abuse, her relationship with Johnson was good, because he would give her whatever she wanted. In fact, Johnson gave her so much that her father and step-mother were concerned enough to question Johnson's motivation. Johnson created an atmosphere of secrecy when he told her not to tell anyone about the sexual abuse. Also, given Dr. Duffee's testimony, the jury could have believed that B.F.'s behavioral and weight problems could stem from the psychological difficulty of dealing with the sexual abuse and that her recent

promiscuity would also fit the pattern of a sexually abused child.

{¶ 22} Johnson insists that B.F. lied about the abuse because she learned that he and her mother were going to marry and move out-of-state without her. But B.F. was aware of this a couple of months before the sexual abuse was revealed. Moreover, as Dr. Duffee explained, when sexual abuse begins at a very young age, children often delay in reporting it. B.F. was only six years old when the sexual abuse began. The jury was free to accept or to reject Johnson's explanation of B.F.'s motivation to lie.

{¶ 23} Johnson and K.F. claimed that his physical problems caused him to be able to have intercourse only while lying on his side. The jurors not only heard and saw their testimony, they were also able to see Johnson's mobility, including any impairments, while he moved around in the courtroom, in assessing the credibility of the couple in this regard.

{¶ 24} As Johnson admits, the State's case did not entirely depend on B.F.'s testimony. The State also offered evidence of Johnson's semen on B.F.'s bed sheet. K.F. offered an explanation. She claimed that when their sheets were in the laundry, she put B.F.'s sheet on their bed, where it stayed for several days, and that they had intercourse while the sheet was on their bed. She further insisted that she allowed B.F. to remove the soiled sheet and put it back on her own twin bed. It is significant that despite several opportunities, K.F. never told police that B.F.'s sheet had been on K.F.'s bed.

{¶ 25} The jury "is particularly competent to decide 'whether, and to what extent, to credit the testimony of particular witnesses,' [and] we must afford

substantial deference to its determinations of credibility.” *State v. Spears*, 178 Ohio App.3d 580, 2008-Ohio-5181, ¶12, quoting *State v. Lawson* (Aug. 22, 1997), Montgomery App. No. 16288. The jury heard the testimony of all of the witnesses and saw their demeanor. The jury’s verdict reflects that they found the testimony of B.F. and other witnesses for the State to be more credible than that of Johnson and K.F. Based on the record before us, we conclude that there is sufficient evidence to support the convictions. We do not conclude that the jury clearly lost its way or that there has been a manifest miscarriage of justice. Consequently, we will not disturb the jury’s verdict.

{¶ 26} Johnson’s sole assignment of error is overruled.

III

{¶ 27} Johnson’s sole assignment of error having been overruled, the judgment of the trial court is Affirmed.

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DONOVAN, P.J., and BROGAN, J., concur.

Copies mailed to:

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